

Supreme Court, U. S.  
FILED

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MICHAEL RODAK, JR., CLERK

In The  
**Supreme Court of the United States**

Term, 1977

No. \_\_\_\_\_

**77-409**

ROGER L. GOODWIN,

*Petitioner,*

VS.

THE STATE OF IOWA,

*Respondent.*

**PETITION FOR WRIT OF CERTIORARI TO THE  
SUPREME COURT OF THE STATE OF IOWA**

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**PETITION FOR WRIT OF CERTIORARI TO THE  
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Petitioner prays that a writ of certiorari issue to re-  
view the judgment of the Supreme Court of the State of  
Iowa, entered in the above-entitled case on May 20, 1977,  
and the denial of the Petition for Further Review, entered  
herein on July 7th, 1977.



### **CITATIONS TO OPINIONS BELOW**

The opinion of the Supreme Court of the State of Iowa sustains the judgment of the Polk County District Court and is printed in the Appendix.

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### **JURISDICTION**

The judgment of the Supreme Court of the State of Iowa was entered on May 20th, 1977, and the Supreme Court of Iowa denied petitioner's Petition for Further Review on the 7th day of July, 1977. The jurisdiction of this Court is invoked under 28 U. S. C. 1257.

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### **QUESTION PRESENTED**

Whether or not the petitioner was denied his right to a fair and impartial trial under the Sixth and Fourteenth Amendments to the Constitution of the United States by the District Court's failure to allow cross-examination of one of the State's identification witnesses.

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### **STATEMENT OF THE CASE**

Defendant, Roger L. Goodwin, was indicted by the Polk County Grand Jury for the crime of Embezzlement by Agent under Section 710.5 of the 1973 Code of Iowa. Defendant pled not guilty. The matter came on for trial

on the 10th day of November, 1975. On November 14, 1975, the jury returned a verdict finding the defendant guilty as charged. A Motion in Arrest of Judgment and for New Trial was filed on several grounds relating to the recollections of Alice Slatkoske. Both motions were overruled. Judgment was entered and defendant gave notice of appeal.

The petitioner was sentenced to ten years imprisonment.

On May 20th, 1977, the Supreme Court of the State of Iowa affirmed the District Court.

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### **REASONS FOR GRANTING THE WRIT**

Certiorari should be granted because the Supreme Court of the State of Iowa in affirming the District Court judgment has rendered a decision which violates the constitutional rights of the petitioner under the Sixth and Fourteenth Amendments of the Constitution of the United States.

*In Re Paulos' Estate*, 229 N. W. 2d 721 (Iowa 1975).

*State v. Crawford*, 202 N. W. 2d 99 (Iowa 1972).

*State v. Davis*, 236 Iowa 740, 19 N. W. 2d 655 (1945).

*State v. Harvey*, 242 N. W. 2d 330 (Iowa 1976).

*State v. Masters*, 261 Iowa 366, 151 N. W. 2d 133 (1967).

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*Murphy v. Southern Pacific Co.*, 31 Nev. 120, 101 P. 322 (1909).

*Hopkins v. State*, 9 Okla. Crim. 104, 130 P. 1101 (1913).

81 Am. Jur. Witnesses, §§ 542-543 (1976).

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### CONCLUSION

For the reasons stated above, certiorari should be granted.

Respectfully submitted,

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### APPENDIX

#### IN THE COURT OF APPEALS OF IOWA

(Filed May 20, 1977)

128

59029

STATE OF IOWA,

*Appellee,*

vs.

ROGER L. GOODWIN,

*Appellant.*

Appeal from Polk County District Court—Gibson C. Holliday, Judge.

Defendant appeals the trial court's refusal to allow cross-examination of a State's witness. Affirmed.

Richard C. Turner, Attorney General of Iowa for Appellee.

Martin R. Dunn, of Des Moines, for Appellant.

Submitted to Allbee, C. J., and Donielson, Snell, Oxberger and Carter, JJ.

#### PER CURIAM:

Defendant Roger L. Goodwin urges the trial court erred in refusing to allow cross-examination of a State's witness. Alice Slatkoske was not allowed to testify regarding her recollection of an unrelated incident of misidentification made by a fellow bank teller in a robbery action. We affirm.



App. 2

The in-chambers testimony of Slatkoske relied on as an offer of proof revealed she was aware that the teller had identified a person who had been arrested and charged with a robbery but that she had no knowledge of the disposition of that case. T. 165. The offer of proof, therefore, indicated Slatkoske had no knowledge of the subsequent finding of misidentification in the unrelated incident.

This case is controlled by *State v. Harvey*, 242 N. W. 2d 330 (Iowa 1976). In *Harvey* the court held as a matter of law the defendant's offer of proof was not sufficiently probative to be introduced to the jury on the issue of his credibility in the absence of any evidence tending to show such proffered fact (the witness' admission to a hospital for a "nervous disorder under the care of a psychiatrist") was related to the witness' capacity to perceive, remember, or relate the facts narrated in his testimony. 242 N. W. 2d at 338.

The offer of proof failed to demonstrate Slatkoske's prior knowledge of the misidentification. In order to show faulty memory it is necessary to first establish that the witness at one time knew the fact. Only then can the present inability to recount that fact be found due to faulty memory. Ignorance of the fact precludes faulty memory of it.

Affirmed.